IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 75-647

FOOD HANDLERS LOCAL 425 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al.,
Petitioner,

vs.

VALMAC INDUSTRIES, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

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Petitioner Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above case on July 29, 1975.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 519 F.2d 263. It is reproduced in the Appendix herein App. p. A-12.[1]

[1] All references to the Appendix filed herewith will be by the notation App. followed by pagination (pp. A- . . . .).

The pertinent District Court's Opinions are reproduced in the Appendix as follows:

July 12, 1974, Ruling of the Court (App. p. A-1);

August 1, 1974, Preliminary Injunction (App. p. A-8).

JURISDICTION

Following entry of the judgment of the Court of Appeals on July 29, 1975, Petitioner timely submitted a Petition for Rehearing and Suggestion for Rehearing En Banc. The Petition and Suggestion were denied upon August 20, 1975. (App., p. A-22). This petition for certiorari is filed within 90 days of the latter date. This Court's jurisdiction is invoked pursuant to Title 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether a federal court can properly issue an injunction against a peaceful work stoppage despite the prohibitions of the Norris-LaGuardia Act, where the work stoppage is *not* "over a grievance which the (employer and union) were bound to arbitrate . . .," and where issuance of the injunction does not further the federal labor policy favoring resolution of disputes by final and binding arbitration.[2]

STATUTORY PROVISIONS

The instant case involves Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, and § 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185(a). These provisions are set forth at App. pp. A-23-25.

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[2] *The Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970) at 254.

STATEMENT OF THE CASE

Jurisdiction

Respondent Valmac Industries, Inc. brought this action under § 301 of the Labor Management Relations Act, as amended, 29 U.S.C. § 185(a) against Petitioner Food Handlers Local 425 of the Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO (hereinafter "Union") and others, seeking *inter alia* injunctive relief against picketing and the honoring of picket lines at its Waldron and Pine Bluff, Arkansas plants. Valmac's contention was that the picketing was in violation of "no strike" provisions contained in separate collective bargaining agreements in effect at Waldron and Pine Bluff.

STATEMENT OF FACTS

Union is and was, at all relevant times, exclusive collective bargaining representative of certain employee at Valmac's poultry-processing plants at Russellville, Dardanelle, Waldron and Pine Bluff, Arkansas. Each of the four plants was treated as a separate bargaining unit, and was, at all relevant times covered by a separate collective bargaining agreement. The collective bargaining agreements covering the Russellville and Dardanelle plants were negotiated simultaneously, and expired simultaneously upon June 29, 1974, without agreement between Valmac and Union upon a new contract.

On July 1 and 2, 1974, Russellville and Dardanelle employees picketed at Valmac's Waldron and Pine Bluff plants, with signs reading:

> "Valmac Industries, Inc."
> Russellville and Dardanelle,
> Arkansas on strike
> Foodhandlers Local Union 425.

Employees at the Waldron and Pine Bluff plants honored the Russellville-Dardanelle picket line, declining to work on July 1 and 2. The collective bargaining agreements then effective at Waldron and Pine Bluff contained, at Article XV, the following language:

> "It shall not be a violation of this Agreement for an employee to refuse to pass through a picket line authorized by this Union."

On July 2, 1974, Valmac filed in the trial court a complaint seeking injunction against picketing (and, logically, the honoring of picket lines) at its Waldron and Pine Bluff plants. The complaint alleged that the picketing and relating activity at Waldron and Pine Bluff violated Article XIV of the collective bargaining agreements applicable to those plants. Article XIV of the agreements provided, in pertinent part:

> During the whole period this Agreement is in effect, the Company shall not lock out its employees and the Union shall not authorize or sanction any strike, stoppage, slowdown or suspension of work against the Company, except for failure of the other party to submit to the arbitration procedure as provided for in Article V of this Agreement, and only then upon forty-eight (48) hours written notice to the other party, and the other party's continued failure to submit to arbitration.

The arbitration and grievance procedure set forth in the bargaining agreements covering the Waldron and Pine Bluff plants provided, at Article V, Step 4, as follows:

> The matter above described, *or any grievance complaint of the Company*, shall be submitted to an arbitrator mutually agreeable to the parties. If the parties cannot agree upon an arbitrator within five (5) days, the party requesting arbitration shall request a list of five (5) arbitrators from the Federal Mediation and Conciliation Service, from which the parties shall be appointed arbitrator. The arbitrator shall have authority only to interpret and apply the provisions of this Agreement, *and his written decision shall be final and binding on all parties*. (Emphasis added).

Valmac stipulated at hearing that it made no request for arbitration of the alleged contract violation at Waldron and Pine Bluff between July 1 and July 12, 1974. Nevertheless, on July 2, 1974, after unilateral hearing in the district court's chambers without notice to Union, the district court entered a preliminary injunction prohibiting picketing (and, consequently, the honoring of any picket line) at Waldron and Pine Bluff. App. p. A-5.

By letter dated July 13, 1974 (but delivered upon July 12), Valmac for the first time demanded arbitration of Union's alleged violation of the "no strike" language in the Waldron and Pine Bluff contracts.

The District Court's Decision

On July 12, 1974, the district court conducted a bilateral hearing concerning Valmac's Prayer for Injunction. Union agreed at the hearing to arbitration of the dispute concerning the "picket line clause" and "no strike" contract language. At the conclusion of the hearing, the district court concluded: there existed no grievance between Employer and Union concerning the Waldron and Pine Bluff plants, indeed, that "there is nothing between Union and Company to arbitrate as a grievance on either Waldron or Pine Bluff . . ." App. p. A-5. Nevertheless, finding that there was "substantial probability" that Valmac would be successful (in proving) at arbitration that Union had violated the "no strike" language in the Pine Bluff and Waldron

contracts, and citing *Boys Markets*,[3] the district court granted a preliminary injunction against further picketing.

But in prohibiting further picketing (and honoring of the picket line) at Waldron and Pine Bluff, the district court failed to require Valmac to honor its letter demanding final and binding arbitration of its claim that picketing at Waldron and Pine Bluff violated collective bargaining agreements in effect there. App. pp. A- . Thereafter, Valmac refused to honor its own demand to arbitrate its claim that Union had violated collective bargaining agreements at Waldron and Pine Bluff by picketing (and by employees' honoring the resulting picket lines) at Waldron and Pine Bluff, contending (as a basis for its refusal) that the district court had by its July 12, 1974 findings and consequent order "already decided" the issue of contract violation against Union.

THE PROCEEDINGS BELOW

Union appealed the District Court's grant of injunctive relief. On July 29, 1975, the Court of Appeals affirmed the trial court's issuance of a *Boys Markets* injunction, acknowledging a split of authority among the Circuits and adopting that line of authority which dispenses with the requirement that a work stoppage, to be enjoined, must be "over" a grievance which the parties were contractually bound to arbitrate. The decision of the Court of Appeals is, as we have said, appended at Appendix A, *infra*.

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[3] See fn. 2, *supra*.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Incorrectly Construed and Applied Federal Labor Policy in Conflict With This Court's Holding in Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970).

In *The Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970), the United States Supreme Court "re-examine(d) (its) holding in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962), that the anti-injunction provisions of the Norris-LaGuardia Act[4] precludes a federal district court from enjoining a strike in breach of a no-strike obligation under a collective bargaining agreement, even though that agreement contains provisions, enforceable under § 301(a) of the Labor Management Relations Act, 1947, for binding arbitration of the grievance dispute concerning which the strike was called." *Id.* at 237-38. Thus, in *Boys Markets*, this Court sought to accommodate Norris-LaGuardia's broad prohibition against federal court injunction of peaceful work stoppages with the federal labor policy "to encourage settlement of labor disputes through enforcement of compulsory arbitration agreements . . . ." *AVCO Corp. v. Local 787*, 459 F.2d 968, 970 (3rd Cir. 1972). Noting that the federal labor policy favoring final and binding arbitration of contract disputes must be served, this Court then reversed *Sinclair*, holding that strikes which result from grievances which are subject to final and binding arbitration under a collective bargaining agreement, and are in apparent violation

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[4] "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment. . . ." 29 U.S.C. § 104.

of a contract no-strike clause, may be enjoined pending arbitration. *Boys Markets, supra* at 253-55. The Court carefully characterized its holding as a "narrow" one, stating as follows:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. *When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract does have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike.* (Emphasis added). (Citing the Dissenting Opinion in *Sinclair; Boys Markets, supra* at 254.

The *Boys Markets* Court thus restricted its holding to a closely-defined factual situation: one where, in the context of a contractual no-strike obligation and a final and binding arbitration procedure, a union chooses to strike to force an employer to accede to the union position concerning an arbitral grievance rather than to submit the grievance to the contract arbitration procedure. The purpose of an injunction ending the Union's strike under such circumstances is to force the union back to the contract arbitration procedure as the favored means of resolving the grievance over which the union had struck.

Subsequent to *Boys Markets*, some lower courts have distorted and enlarged[5] this Court's explicit holding therein, authorizing injunctive relief against work stoppages *not* in support of and indeed unrelated to grievances or disputes subject to contractually final and binding arbitration. The instant case falls squarely within this latter category.

[5] Contrary to the assertion of Petitioner Employer in *Buffalo Forge Co. v. United States Steelworkers of America, AFL-CIO* (No. 75-339—application granted) this Court did not "enlarge" upon *Boys Markets* in *Gateway Coal Co. v. UMWA*, 414 U.S. 368 (1974). In that case, the Court simply determined whether the dispute which *caused* a work stoppage was arbitrable under contract arbitration machinery. This Court thus implicitly recognized and reinforced the *Boys Markets* requirement that a strike, to be enjoined, must be "*over* a grievance which the parties are contractually bound to arbitrate." (Emphasis added). See *NAPA Pittsburgh, Inc. v. Automotive Employees Local Union 926*, 502 F.2d 321 at 331-32 (3rd Cir. 1974) (Hunter, Cir. Judge, dissenting).

The dispute which here caused the picketing and work stoppage at Waldron and Pine Bluff was *not* one subject to the arbitration procedure contained in contracts effective at those plants. The dispute arose at Dardanelle and Russellville, where contracts had expired. It was wholly economic in nature, consisting solely of the inability of Valmac and Union to agree upon new contract terms for Russellville and Dardanelle, and was not subject to final and binding arbitration. In short, the picketing and work stoppages at Waldron and Pine Bluff were not "over" a grievance which the parties were contractually bound to arbitrate. There was no compliance with the previously-discussed requirement defined by this Court in *Boys Markets*.

The injunction approved by the Eighth Circuit herein was similarly unrelated to and did not serve the federal labor policy "to encourage settlement of labor disputes through enforcement of compulsory arbitration agreements." *AVCO, supra*.

There was here, as the District Court found, no arbitrable grievance involved at Waldron and Pine Bluff at the time of the picketing and work stoppage there. There was, as the District Court found, *nothing* to arbitrate at those plants other than Valmac's claim that the picketing and work stoppages themselves violated contract "no strike" language. The issuance of an injunction against the picketing and work stoppage under such circumstances, rather than promoting federal policy favor-

ing final and binding arbitration, operated to discourage it. "Once the district court has issued its injunction, the employer will have everything he seeks, since the work stoppage will have been ended. As a result, he will no longer have anything to gain from arbitration. On the other hand, arbitration might conceivably be very costly to him, since once the merits of the issue are reached, he will always run some risk of losing and a defeat on the merits would cause the injunction to lapse, raising the possibility of a renewal of the work stoppage. Thus, the rational employer will (under such circumstances) not only avoid initiating arbitration, he will use every means at his disposal to delay it as long as possible." *NAPA Pittsburgh, Inc. v. Automotive Workers*, 502 F.2d 321 at 328 (3rd Cir. 1974) (Hunter, Cir. Judge dissenting).

Predictably, after obtaining an injunction by demanding arbitration of its claim that picketing and work stoppage at Waldron and Pine Bluff violated contractual no strike provisions, Valmac thereafter refused to arbitrate, and indeed was not ordered to do so until the Eighth Circuit so directed more than a year after the injunction issued. See App. pp. A-20-21.

In sum, the only effect of the injunction issued in the instant case was substantially to undermine Union's efforts to win economic concessions at Dardanelle and Russellville, where no contracts were in effect. The federal labor policy favoring resolution of disputes through final and binding arbitration was not served. It will almost always be so where courts do not adhere to the *Boys Markets* requirement that a work stoppage, to be enjoined, must be *over* a grievance which contracting parties are bound to arbitrate.[6] This result,

[6] See *Amstar Corp. v. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO*, 468 F.2d 1372 at 1373 (5th Cir. 1972); *NAPA Pittsburgh, Inc. v. Automotive Employees Local Union 926*, 502 F.2d 321 at 324-33 (3rd Cir. 1974) (Hunter, Cir. J., dissenting). See also Note, 88 Harv. L.Rev. 463, 466-70 (1974).

of course, flies in the very face of the purposes underlying the enactment of the Norris-LaGuardia Act: that of preserving from federal court intervention the working man's right to strike in support of demands for improved terms and conditions of employment. This fact—that Norris-LaGuardia is almost wholly undermined and that the federal labor policy favoring resolution of disputes through final and binding arbitration is not served—lies at the heart of our request for review of the Eighth Circuit's decision herein.

II. The Decision Below Reflects an Important Issue of Federal Labor Law Upon Which the Courts of Appeals Are in Direct and Unalterable Conflict.

There is an irreconcilable conflict between various courts of appeal upon the federal labor law issue here presented. Some have adhered strictly to the language and purposes contained and reflected in this Court's *Boys Markets* decision.[7] Other Circuits have, to the contrary, declined to follow the literal requirement set out in *Boys Markets* and have approved the issuance of injunctions against strikes or work stoppages not "over a grievance which the parties are contractually bound to arbitrate."[8] That the grant or denial of

[7] *Plain Dealer Publishing Co. v. Typographical Union No. 53, el al.*, — F.2d —, 90 LRRM 2110 (6th Cir. Aug. 15, 1975); *Hyster Co. v. Independent Towing & Lifting Machine Assoc.*, 519 F.2d 89 (7th Cir. 1975); *Buffalo Forge Co. v. United Steel Workers of America, AFL-CIO, et al.*, 517 F.2d 1207 (2nd Cir. 1975); *United States Steel Corp. v. United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975); *Amstar Corp. v. Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO*, 468 F.2d 1372 (5th Cir. 1972). See also, e.g., *General Cable Corp. v. Intl. Brotherhood of Electrical Workers, Local Union 1644*, 331 F.Supp. 478 (D.Md. 1971); *Simplex Wire & Cable Co. v. Intl. Brotherhood of Electrical Workers, Local 2208*, 314 F.Supp. 885 (D.N.H. 1970).

[8] *Valmac Industries, Inc. v. Food Handlers Local 425*, 519 F.2d 263 (8th Cir. 1975); *Island Creek Coal Co. v. UMWA*, 507 F.2d 650 (3rd Cir. 1975), cert. den. — U.S. — (Oct. 6, 1975); *Armco*

an injunction should depend solely upon a Court's geographical location is no small anomaly. Upon this basis, another petition has been granted by the Court in *Buffalo Forge Co. v. UMWA*, No. 75-339.

It is extraordinarily important that the conflict among the various Courts of Appeals be resolved. In those Circuits where *Boys Markets* is not followed, and when an employer may thus obtain an injunction against a strike or work stoppage not over a grievance which the parties are contractually bound to abritrate, the supposedly still viable prohibitions of Norris-LaGuardia are in fact totally inoperative. In those jurisdictions, as reflected in the instant case, an employer may simply allege that a work stoppage is a violation of a contractual "no strike" provision, demand arbitration of the resulting "dispute" and obtain (often *ex parte*) a restraining order and subsequent injunction against the work stoppage. This is often so even where, as in the instant case, applicable contracts contain clear, precise language (1) authorizing union picketing which is not "over" a contractually-arbitrable grievance at the picketing situs and (2) giving bargaining unit employees the right to honor picket lines erected for such purpose.[9] The fact, unfortunate but true, is that many federal judges continue to regard termination of work stoppages as per se de-

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Steel Corp. v. UMWA, 505 F.2d 1129 (4th Cir. 1974), cert. den. — U.S. — (Oct. 6, 1975); *Pilot Freight Carriers, Inc. v. Teamsters Local 391*, 497 F.2d 311 (4th Cir. 1974), cert. den. 419 U.S. 869 (1974); *Wilmington Shipping Co. v. Intl. Longshoremen's Assoc.*, — F.2d —, 86 LRRM 2846 (4th Cir. 1974), cert. den. 95 S.Ct. 498 (1974); *NAPA Pittsburgh, Inc. v. Automotive Employees Local Union 926*, 502 F.2d 321 (3rd Cir. 1974), cert. den. 419 US. 1049 (1974); *Monongahela Power Co. v. Intl. Brotherhood of Electrical Workers Local 2332*, 484 F.2d 1209 (4th Cir. 1973). See also *Barnard College v. Transport Workers Union*, 372 F.Supp. 211 (S.D.N.Y. 1974).

[9] "It shall not be a violation of this Agreement for an employee to refuse to pass through a picket line authorized by this Union."

sirable. Thus, in those jurisdictions which decline to follow *Boys Markets'* literal language, employers can use otherwise inapplicable "no strike" contract language in a "boot strapping" operation to obtain quick termination of work stoppages. The only effect of injunctions against work stoppages under such circumstances is to nullify employees' right to engage in peaceful strikes to improve their terms and conditions of employment. As previously stated, such injunctions do not serve the federal labor policy favoring final and binding arbitration of labor disputes. And as reflected by the volume of cases set forth in footnotes 7 and 8, *supra*, the problem is anything but uncommon. Unless the conflict is resolved, labor unrest can be the only long-range result.

CONCLUSION

For the foregoing reasons, we pray that this Petition for Certiorari be granted.

Respectfully submitted

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